



## MEMO

**To :** POLICY AND PROCEDURE COMMITTEE  
RAMON ALVAREZ C., CHAIR  
GLENN STEVENS, MEMBER

**Date:** October 11, 2013

**From :** WILLIAM G. BRENNAN  
ROBIN PARKER

**Subject:** DISCUSSION CONCERNING PENDING AND ENACTED LEGISLATION

The following provides a summary of pending and enacted State legislation that is of interest to the New Motor Vehicle Board ("Board"). The criteria for reporting on "legislation of general interest" is that the bill impacts the Vehicle Code, the Board, and/or the automotive industry in general and does not directly impact the Board or its enabling statute. For purposes of this report "legislation of special interest" is that which directly affects the Board's laws or functions.

Bill summaries include an overview of the bill, including aspects of the overview provided by the Legislative Counsel's Digest, as well as the current status of the bill.<sup>1</sup>

a. Legislation of Special Interest.

**Senate Bill 155 - Senator Padilla** (Introduced January 3; amended April 4 and 22, May 7, June 10, August 21, and September 6; Chaptered October 3)

**Status:** This bill passed the Senate and Assembly; it was enrolled and sent to the Governor on September 19. It was signed by the Governor and Chaptered on October 3; it takes effect on January 1, 2014.

**Support:** California New Car Dealers Association (CNCDA) (sponsor), California Motorcycle Dealers Association.

**Opposition:** Alliance of Automobile Manufacturers, Association of Global Automakers, and Ford Motor Company.

**Legislative Counsel's Digest:** Vehicles: motor vehicle manufacturers and distributors.

Existing law prescribes procedures to be followed by franchisors, franchisees, and the Board regarding claims for warranty reimbursement or incentive compensation. Existing law authorizes franchisors to conduct audits of franchisee warranty records and incentive records on a reasonable basis, and authorizes a franchisor to audit

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<sup>1</sup> All dates are for the year 2013 and all statutory references are to the Vehicle Code, unless otherwise indicated.

the franchisee's incentive records for 18 months, and warranty records for 12 months, after a claim is paid or credit issued. Existing law prohibits the disapproval of franchisee claims except for good cause, as specified, and requires that a notice of disapproval state the specific grounds upon which the disapproval is based. Existing law gives a franchisee one year from receipt of the notice of disapproval of an incentive compensation payment to appeal the disapproval to the franchisor and file a protest with the Board.

This bill would revise these provisions to require, among other things, the franchisor to provide the franchisee with the specific grounds upon which any previously approved claims are disapproved following an audit, and to prohibit a previously approved claim from being charged back to the franchisee except under certain circumstances, including when the claim is false or fraudulent. The bill would require the franchisor to provide a reasonable appeal process to allow the franchisee to respond to any disapproval with additional supporting documentation or information rebutting the disapproval or to cure noncompliance, as provided. The bill would authorize the audit of a franchisee's incentive and warranty records for 9 months after a claim is paid or credit is issued, as specified. The bill would give a franchisee 6 months from the date of receipt of a specified written notice to file a protest with the Board, and would specify that in the protest proceeding the franchisor has the burden of proof.

Existing law requires every vehicle franchisor to properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to fulfill that warranty when the franchisee has fulfilled warranty obligations of repair and servicing. Existing law also requires the franchisor to file a copy of its warranty reimbursement schedule or formula with the Board, and requires the Board to determine the reasonableness of the warranty reimbursement schedule or formula if the franchisee files a notice of protest with the Board.

This bill would additionally require a franchisor to adequately and fairly compensate each of its franchisees for labor and parts used to provide diagnostic services under a warranty, and would prohibit a franchisor from replacing, modifying, or supplementing a warranty reimbursement schedule to impose a fixed percentage or other reduction in the time and compensation allowed for warranty repairs not attributable to a specific repair. The bill would also require, if the Board determines that the warranty reimbursement schedule or formula fails to provide adequate compensation, the franchisor to correct the failure by amending or replacing the warranty reimbursement schedule and implementing the correction as to all franchisees within 30 days after receipt of the Board's order.

Existing law generally requires a manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer of vehicles to be licensed by the Department of Motor Vehicles. Under existing law, it is unlawful for a manufacturer, manufacturer branch, distributor, or distributor branch to engage in specified practices, including requiring a dealer to make a material alteration, expansion, or addition to any dealership facility, unless the

required alteration, expansion, or addition is reasonable in light of all existing circumstances, including economic conditions.

This bill would prohibit a required facility alteration, expansion, or addition from being deemed reasonable if it requires that the dealer purchase goods or services from a specific vendor if goods or services of a substantially similar kind, quality, and general design concept are available from another vendor, except as specified. The bill would also prohibit the establishment or maintenance of a performance standard, sales objective, or program for measuring a dealer's sales, service, or customer service performance that may materially affect the dealer, including, but not limited to, the dealer's right to payment under any incentive or reimbursement program or establishment of working capital requirements, unless certain requirements are satisfied. The bill would also prohibit a manufacturer, manufacturer branch, distributor, or distributor branch from taking or threatening to take any adverse action against a dealer pursuant to a published export or sale-for-resale prohibition because the dealer sold or leased a vehicle to a customer who either exported the vehicle to a foreign country or resold the vehicle, unless the dealer was provided an export or sale-for-resale prohibition policy, in writing, prior to the sale or lease and the dealer knew or should have known of the customer's intent to export or resell the vehicle, as specified.

The following summarizes the amendments and the impact on the Board.

**Non-substantive amendments:**

Many of these amendments were suggested by the Board staff during meetings with the CNCDA staff.

VEHICLE CODE SECTION(S)	AMENDMENT
3006, 3008, and 3012	Reflects both genders and makes grammatical changes.
3050(c)(2)	Adds "distributor".
3050(d)	Incorporates Article 5 recreational vehicle protests.
3050.7	Incorporates the RV industry and Section 3070 termination protests in Proposed Stipulated Decisions and Orders.
3052	Corrects an inaccurate reference to respondent (should be applicant or licensee) and deletes an obsolete sentence in Section 3052(f) pertaining to oral arguments before the Board via a conference call. Allowing such oral arguments with a quorum of the Board would have to comply with the Bagley-Keene Open Meeting Act.
3056 and 3057	Makes grammatical changes.

VEHICLE CODE SECTION(S)	AMENDMENT
3062	Reflects both the establishment of an additional dealership and the relocation of an existing dealership, and clarifies the term “relevant market area”. These changes reflect what is done in practice.
3063	Clarifies that the good cause factors apply to both establishments and relocations. Adds new subdivision (f) to indicate that the terms “motor vehicle dealership” and “dealership” have the same meaning as defined in Section 3062.
3064	Makes grammatical changes and changes “he” to “franchisee”.
3066	Deletes an obsolete reference to “notice of protest”; the correct reference is “protest”.
3067	Adds Article 5 RV protests to Decisions.
3069.1	Corrects an inaccurate reference to subdivision (e)(1) of Section 3072; the correct reference is subdivision (d).

### **Sections 3065 and 3065.1:**

Sections 3065 and 3065.1 outline the procedures to be followed by franchisors, franchisees, and the Board relative to warranty reimbursement (3065) and franchisor incentive program compensation (3065.1) involving specific new motor vehicle dealers, other than recreational vehicle dealers. Existing law provides in part:

- Contains provisions that authorize franchisors to conduct audits of franchisee warranty records and franchisor incentive program records on a reasonable basis.
- Authorizes a franchisor to audit the franchisee’s warranty records for 12 months after a claim is paid or credit issued.
- Authorizes a franchisor to audit the franchisee’s incentive records for 18 months after a claim is paid or credit issued.
- Prohibits the disapproval of franchisee claims except for good cause, as specified, and requires that a notice of disapproval state the specific grounds upon which the disapproval is based.
- Provides a franchisee one year from receipt of the notice of disapproval of an incentive compensation payment to appeal the disapproval to the franchisor and file a protest with the Board.

Senate Bill 155 clarifies and supplements the procedures relative to claims for warranty reimbursement in the following significant respects:

- Requires the franchisor to adequately and fairly compensate each of its franchisees for labor and parts used to provide diagnostics, repair and servicing under a warranty;

- Prohibits the franchisor from replacing, modifying, or supplementing the warranty reimbursement schedule to impose a fixed percentage or other reduction in the time and compensation allowed to the franchisee for warranty repairs not attributable to a specific repair; and
- Allows a franchisor to reduce the allowed time and compensation applicable to a specific warranty repair only upon 15 days' prior written notice to the franchisee.

Senate Bill 155 clarifies and supplements the procedures relative to claims for warranty reimbursement and claims for franchisor incentive program compensation, in the following significant respects:

- Requires the franchisor to provide the franchisee with the specific grounds upon which any previously approved claims will be charged back, if the franchisor disapproves of a previously approved claim after an audit;
- Prohibits a previously approved claim from being charged back to the franchisee except as specified;
- Prohibits a franchisor from disapproving or charging back a claim based upon an extrapolation from a sample of claims, unless the sample of claims is selected randomly and the extrapolation is performed in a reasonable and statistically valid manner.
- Requires the franchisor to provide a reasonable appeal process to allow the franchisee to respond to any disapproval with additional supporting documentation or information rebutting the disapproval;
- Authorizes the audit of a franchisee's records for 9 months after a claim is paid or credit is issued;
- Provides a franchisee six months from the later of the date of receipt of the notice of disapproval or the completion of any franchisor appeal process to file a protest with the Board, and
- Specifies that, in the protest proceeding, the franchisor has the burden of proof.

#### **Section 3066 - Hearings on Protests:**

- Due to amendments to Sections 3065 and 3065.1 pertaining to which party has the burden, Section 3066(c) was amended to reflect that "except as otherwise provided in this chapter..." in delivery and preparation obligations, warranty reimbursement, and franchisor incentive program protests the burden of proof is on the franchisee.

### **Section 11713.3(y):**

Section 11713.3 provides that it is unlawful and a violation of this code for a licensed manufacturer, manufacturer branch, distributor, or distributor branch to engage in certain practices.

Senate Bill 155 adds subdivision (y) and re-numbers the existing subdivision (y) to (z). Subdivision (y) prohibits a manufacturer or distributor from taking or threatening to take any adverse action against a dealer because the dealer sold or leased a vehicle to a customer who either exported the vehicle to a foreign country or resold the vehicle, unless the export or sale-for-resale prohibition policy was provided in writing to the dealer prior to the sale or lease, and the dealer knew or reasonably should have known of the customer's intent to export or resell the vehicle in violation of the prohibition at the time of sale or lease.

If the dealer causes the vehicle to be registered in this or any other state, and collects or causes to be collected any applicable sales or use tax due to this state, a rebuttable presumption is established that the dealer did not have reason to know of the customer's intent to export or resell the vehicle.

### **Section 11713.13(b), (c) and (g):**

Senate Bill 155 amends subdivision (b) of Section 11713.13 which provides that it is unlawful and a violation of this code for any licensed manufacturer or distributor to:

Require a dealer to establish or maintain exclusive facilities, personnel, or display space if the imposition of the requirement would be unreasonable in light of all existing circumstances, including economic conditions. In any proceeding in which the reasonableness of a facility or capital requirement is an issue, the manufacturer or distributor shall have the burden of proof.

Language was deleted which limited this burden to proceedings under subdivisions (a) or (b) of Section 11713.13. The burden is now on the manufacturer or distributor in "any proceeding". This includes protest hearings.

Subdivision (c) was amended to make it unlawful for a manufacturer or distributor to require a dealer to make a material alteration, expansion, or addition to any dealership facility, unless the required alteration, expansion, or addition is reasonable in light of all existing circumstances, including economic conditions and advancements in vehicular technology.

Subdivision (c)(1) provides that a required facility alteration, expansion or addition is not reasonable if it requires that the dealer purchase goods or services from a specific vendor if goods or services of a substantially similar kind, quality, and general design concept are available from another vendor. A manufacturer or distributor may require the dealer to request approval for the use of alternative goods or services in writing. Approval of these requests shall not be unreasonably

withheld, and the request shall be deemed approved if not specifically denied within 20 business days of receipt of the dealer's written request.

Subdivision (c)(1) does not authorize a dealer to impair or eliminate the intellectual property or trademark rights of the manufacturer or distributor, or permit a dealer to erect or maintain signs that do not confirm to the manufacturer's or distributor's intellectual property usage guidelines.

Subdivision (c)(1) does not apply to a specific good or service if the manufacturer or distributor provides the dealer with a lump-sum payment or series of payments of a substantial portion of the cost of the good or service, if the payment is intended solely to reimburse the dealer for the purchase of the specified good or service.

In any proceeding in which a required facility alteration, expansion, or addition is an issue, the manufacturer or distributor has the burden of proof.

Subdivision (g) was added to Section 11713.13. It prohibits a manufacturer or distributor from establishing or maintaining a performance standard, sales objective, or program for measuring a dealer's sales, service, or customer service performance that may materially affect the dealer, including, but not limited to, the dealer's right to payment under any incentive or reimbursement program or establishment of working capital requirements, unless certain requirements are satisfied. In any proceeding in which the reasonableness of a performance standard, sales objective or program for measuring dealership sales, service, or customer service performance is an issue, the manufacturer or distributor has the burden of proof.

## Programmatic Impact:

The programmatic impact is as follows:

### Education/Outreach

Task	Timeframe	Employee Assigned
1. Host ALJ Roundtable	January 9, 2014	Robin Parker
2. Host Attorney Roundtable	January 10, 2014	Robin Parker
3. Publish an article in the <i>In-Site</i> .	January 2014	Robin Parker, Kathy Tomono
4. Board Development topic for January or February 2014, General Meeting	January or February 2014	Robin Parker, Jonathan Morrison, CNCDA, and the Alliance of Automobile Manufacturers

### Publications

Task	Timeframe	Employee Assigned
1. Update the website	January 2014	Robin Parker
2. Update all guides including the <i>Guide to the New Motor Vehicle Board</i> , <i>Informational Guide for Manufacturers and Distributors</i> , and <i>Administrative Law Judges' Benchbook</i>	January - March 2014	Robin Parker

### Case Management

Task	Timeframe	Employee Assigned
1. Determine whether regulations need to be promulgated	December 2013	Robin Parker
2. Update internal legal procedures	January 2014	Robin Parker
3. Update 3065 and 3065.1 letters	January 2014	Robin Parker
4. Create new sample protests	January 2014	Robin Parker
5. Update enclosures, if necessary	January 2014	Robin Parker

- b. Pending Legislation of Special Interest.

**Assembly Bill 988 - Assembly Member Jones** (Introduced February 22 and amended May 24)

**Status:** This bill passed the Assembly and was referred to the Senate Committee on Transportation and Housing. It is a 2-year bill.

**Support:** California Motorcycle Dealers Association (sponsor).

**Opposition:** None on file

**Legislative Counsel's Digest:** New Motor Vehicle Board: recreational off-highway vehicles.



Existing law establishes the New Motor Vehicle Board that regulates the activities or practices of a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative, as those terms are defined by the Vehicle Code. Existing law requires licensing by the Department of Motor Vehicles to do these activities for specified types of vehicles.

Existing law defines a recreational off-highway vehicle as a motor vehicle designed by the manufacturer for operation primarily off of the highway that has a steering wheel, nonstraddle seating, a maximum speed capability of greater than 30 miles an hour, and an engine displacement equal to or less than 1,000cc.

This bill would include the activities and practices of recreational off-highway vehicle dealers, manufacturers, manufacturer branches, distributors, distributor branches, or representatives within the scope of regulation by the Board.

This bill would require these entities to make application to the Department of Motor Vehicles for a license, but would exempt them from the written examination and education program requirements. The bill would require an applicant for a dealer's license for a dealer who deals exclusively in recreational off-highway vehicles to procure and file a bond with the department in the amount of \$10,000 before a license is issued or renewed. The bill would also require the holders of these licenses and the dealers, manufacturers, manufacturer branches, distributors, distributor branches, and representatives to pay fees for the issuance and renewal of a license.

c. Pending Legislation of General Interest.

**(1) Assembly Bill 225 - Assembly Member Nestande (Principal Coauthor: Assembly Member Medina)** (Introduced February 4; amended April 1, 9, 18, and May 9)

**Status:** This bill passed the Assembly and was referred to the Senate Committee on Transportation and Housing. It is a 2-year bill.

**Support:** Alvarez Jaguar, City of Palm Desert, City of Riverside, Light Electric Vehicle Association, Coachella Valley Economic Partnership, and Ramon Alvarez

**Opposition:** None on file

**Legislative Counsel's Digest:** Medium-speed electric vehicles.

Existing law defines "low-speed vehicle" as a motor vehicle, other than a motor truck, with 4 wheels that is capable of a minimum speed of 20 miles per hour and a maximum speed of 25 miles per hour on a paved level surface and that has a gross vehicle weight rating of less than 3,000 pounds. Existing law imposes certain restrictions on the use of low-speed vehicles on public streets and highways, and generally requires an operator of a low-speed vehicle to have a driver's license. A violation of these provisions is a crime.

This bill would authorize the operation of a medium-speed electric vehicle, as defined, at speeds of no more than 45 miles per hour on a roadway with a speed limit that does not exceed 45 miles per hour. The bill would require a medium-speed electric vehicle to meet certain safety requirements, including specified Federal Motor Vehicle Safety Standards. The bill would make, subject to exceptions, a medium-speed electric vehicle subject to all the laws applicable to a motor vehicle, and the driver of a medium-speed electric vehicle subject to all the laws applicable to the driver of a motor vehicle or other vehicle, as specified. Because it is unlawful and constitutes an infraction for any person to violate, or fail to comply with any provision of the Vehicle Code, this bill would impose a state-mandated local program by creating a new crime.

**(2) Senate Bill 686 - Senator Jackson** (Introduced February 22; amended April 1 and 22, and May 7 and 24)

**Status:** This bill passed the Senate and was referred to the Assembly Judiciary Committee and Business, Professions, and Consumer Protection Committee. It is a 2-year bill.

**Support:** Consumers for Auto Reliability and Safety (sponsor), Advocates for Highway and Auto Safety, CARFAX, California Nurses Association, California Public Interest Research Group, Center for Public Interest Law/Children's Advocacy Institute, Consumer Action, Consumer Attorneys of California, Consumer Federation of California, Consumer Federation of America, Consumer Watchdog, Consumers Union, Enterprise Holdings, Hertz Corporation, Latin Business Association, Trauma Foundation, National Consumers League, Safe Kids California, State Farm, and 1 private individual

**Opposition:** California Chamber of Commerce, California Financial Services Association, California New Car Dealers Association, CarMax Auto Superstores, Inc., Copart, Inc., Civil Justice Association of California, and Independent Automobile Dealers Association of California.

**Legislative Counsel's Digest:** Vehicles: vehicle dealers.

Existing law provides that it is a violation of the Vehicle Code for the holder of any dealer's license issued as specified to advertise for sale or sell a used vehicle as "certified" or use any similar descriptive term in the advertisement or the sale of a used vehicle that implies the vehicle has been certified to meet the terms of a used vehicle certification program if any of specified provisions apply, including, but not limited to, the dealer knows or should have known that the vehicle has sustained frame damage, and the dealer disclaims any warranties of merchantability on the vehicle. Under existing law, a violation of these provisions is a crime.

The bill would also prohibit that representation from being made if the dealer knows or should have known that the vehicle is subject to a manufacturer's safety recall, and the repairs required to correct the defect have not been performed on the vehicle. By creating a new crime, the bill would impose a state-mandated local program.

Existing law provides that it is unlawful for a lessor-retailer to sell a vehicle without a vehicle dealer license or temporary permit. Existing law prohibits a licensed dealer from engaging in certain practices, including, among others, making an untrue or misleading statement indicating that a vehicle is equipped with all the factory-installed optional equipment the manufacturer offers. Under existing law, a violation of these provisions is a crime.

This bill would additionally prohibit a dealer from selling, leasing for an initial term of less than 4 months, renting, loaning, or otherwise transferring ownership at retail of a used vehicle, as specified, if the dealer knows or should have known that the vehicle is subject to a manufacturer's safety recall, unless the repairs required to correct the defect have been performed on the vehicle. The bill would additionally prohibit a rental company that is also a dealer from selling or otherwise transferring ownership at retail of a used vehicle, if the rental company knows or should have known that the vehicle is subject to a manufacturer's safety recall, unless the repairs required to correct the defect have been performed on the vehicle. The bill would require a dealer to obtain information about a used vehicle's safety recall status, as specified. By creating a new crime, this bill would impose a state-mandated local program. The bill would also make a violation of these provisions actionable under the Consumers Legal Remedies Act and the Unfair Competition Law, and as false advertising. Specified prohibitions of this bill would become operative upon the initial effective date of the regulations adopted pursuant to a provision of the federal Moving Ahead for Progress in the 21st Century Act that implement that act. The bill would correct erroneous cross-references.

d. Pending Federal Legislation of General Interest: None.

This matter is for information only at the November 13, 2013, General Meeting. If you have any question or require additional information, please contact me at (916) 324-6197 or Robin at (916) 323-1536.

cc: Bismarck Obando